

REPORT DOCUMENTATION PAGE			
1. AGENCY USE ONLY (leave blank)	2. REPORT DATE September 30, 1996	3. REPORT TYPE & DATE COVERED DoD 1401.1-M, Change 7	
4. TITLE & SUBTITLE Personnel Policy Manual For Nonappropriated Fund Instrumentalities		5. FUNDING NUMBERS	
6. AUTHOR(S) B. Kuhns			
7. PERFORMING ORGANIZATION NAME(S) & ADDRESS(ES) Assistant Secretary of Defense for Force Management Policy Washington, DC 20301		8. PERFORMING ORGANIZATION REPORT NUMBERS	
9. SPONSORING/MONITORING AGENCY NAME(S) & ADDRESS(ES)		10. SPONSORING/MONITORING AGENCY REPORT NUMBERS	
11. SUPPLEMENTARY NOTES The DTIC accession number for the basic Manual is ADA-267857.			
12a. DISTRIBUTION/AVAILABILITY STATEMENT Unclassified, Release unlimited.		12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 Words) This Change 7 to DoD 1401.1-M, "Personnel Policy Manual For Nonappropriated Fund Instrumentalities," December 1988, is provided to DTIC.			
14. SUBJECT TERMS 19970123 018		15. NUMBER OF PAGES 20 Pages	16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT

DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
DoD 1401.1-M, Change 7	September 30, 1996	Special

ATTACHMENTS

19 pages

INSTRUCTIONS FOR RECIPIENTS

The following page changes to DoD 1401.1-M, "Personnel Policy Manual For Nonappropriated Fund Instrumentalities," December 1988, are authorized:

PAGE CHANGES

Remove: Pages vi through xiii, V-3 through V-9

Insert: Attached replacement pages and new pages VIII-1 through VIII-4

EFFECTIVE DATE

The above changes are effective immediately.



Larry E. Curry, Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

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e. Business Based Action Procedures

(1) Determining Affected Employees

(a) Covered employees must be ranked to determine the order in which they will be affected (unless all employees will be equally affected—separation due to base closure, for example). The ranking process must include performance and seniority. Performance may be the primary criterion. The performance factor must include at least the employee's last two performance ratings. If there is only one rating, then it must be used. If there is no rating, then a rating must be issued and used.

(b) The determination of the order in which employees were adversely affected, the process used to determine the order, and copies of the written notices shall be maintained in a separate BBA file apart from the employee's official personnel folder. Subject to the provisions of the Privacy Act of 1974, the BBA file shall be made available for review upon request only by an affected employee or by those whose official duties require access.

(2) Effective Date and Requirement for Extended Employment. In some individual cases, the Chapter VIII requirement for extended employment for retirement and health insurance eligibility will affect the determination of the effective date of separation.

(3) Advance Notice. The minimum advance notice period for covered Regular employees is 7 calendar days for a non-separation action and 30 calendar days for separation. For covered Flexible employees, the minimum advance notice period is 24 hours for non-separation action and 7 calendar days for separation. Under emergency conditions (e.g., breakdown of equipment or other emergency conditions requiring suspension of operations, or an unanticipated reduction in business such as occurs with a sudden deployment of troops) a minimum of 24 hours notice may be given. The notice shall contain:

(a) The employee's position title, series, grade or payband level, and rate of pay.

(b) A description of the BBA and reason for it.

(c) Advice on severance pay entitlement, if applicable.

(d) Advice on loss of benefits, if applicable.

(e) If the action is separation:

1 A statement that the action taken is non-disciplinary and does not preclude re-employment.

2 Information on the reemployment priority list (RPL).

3 Information on eligibility for Civil Service positions for one year from date of separation, under the terms of the DoD/OPM Interchange Agreement.

4 Information on unemployment compensation

* 5 Information on other benefits described in Chapter VIII, as applicable. *

(f) An explanation of the employee's right to appeal, including how and where to appeal and the time limits.

* (4) Appeals of Business Based Actions *

(a) General. Covered employees have a right to appeal in accordance with the following provisions, within 7 calendar days after the effective date of the BBA, if they believe BBA regulations and procedures were not properly applied. Management decisions regarding the budget, workload, organization and mission are reserved to management and are not appealable. If an employee alleges that the action resulted from an act of discrimination, the action may only be contested through the discrimination complaint procedure.

A decision in favor of an employee entails the requirement that the employee be "made whole." This includes pay and restoration to duty including employment rights and benefits, as applicable. If, however, it is clear the same action would have been taken against the employee even if the regulatory or procedural error had not been made, then there is no "made whole" provision.

(b) Representation. An employee may be accompanied, represented, and advised by a representative of his or her own choosing, provided the person is willing and free to do so. The employee shall designate his or her representative in writing and provide the designation to the first stage deciding official. The representative's service must not result in a conflict of interest as determined by the installation commander. All costs for the representative shall be borne by the employee.

(c) Use of Official Time. The employee and his or her designated representative may use reasonable amounts of official duty time subject to supervisory determination as to when such time may be used in light of priority needs of the NAFI. Such time may be used to prepare and present appeals.

* (5) Business Based Action Appeals Procedure *

(a) First Stage. The employee and his or her representative shall, not later than 7 calendar days after the effective date of the BBA, present an written appeal to the lowest level of management which can grant relief. Every effort shall be made to resolve the matter promptly and fairly at this stage. A written decision shall be provided to the employee within 7 calendar days of receipt of the appeal. It shall summarize the issue, the consideration given, and advise the employee of the right to seek relief at the next stage within 7 calendar days from the date of receipt of the decision, if he or she is not satisfied.

(b) Second Stage. A written appeal shall be submitted to an official, designated by management, in the chain of command above the official who considered the appeal at the first stage. Upon receipt of the appeal, the deciding official may designate a disinterested third party to review the facts and make a recommendation to the deciding official. A written decision shall be provided the employee within 45 calendar days of receipt of the appeal. The decision shall summarize the issue, the consideration given, and advise Regular employees of: (1) the right to request a review of the written appeal record by a level above the installation commander or principal management official of the Army and Air Force Exchange Service (AAFES); (2) how and where to file the request; and (3) time limits for filing. There is no further review or appeal above this level for covered Flexible employees.

(c) Third Stage (Applies to Regular employees only). The official above the installation commander, or the principal management official of AAFES, designated as the reviewer, shall make a decision based on the written record within 30 calendar days of receipt. NAF resources shall be used to accomplish BBA appellate review above the base level. Components may request exception to this NAF resource requirement. There is no further review or appeal above this level.

* (6) Record of Appeal. A complete record of the appeal shall be maintained in the BBA file. *

5. Reemployment Priority Lists.

a. Each personnel office servicing a NAF activity that separates employees by BBA shall establish a Reemployment Priority List (RPL) to provide placement assistance to those separated by BBA. Separated employees shall have priority placement rights in the NAF activity from which separated and priority consideration rights at other NAF activities in the commuting area. They shall immediately be placed on the RPL and remain on the RPL until reemployed, but not longer than 1 year from the date of separation.

b. NAF employees who were separated by BBA no more than one year prior to the effective date of this RPL policy shall be added to the RPL. Placement or consideration is prospective from the time placed on the list. As an exception to the general rule, employees so added shall remain on the list until reemployed or until one year from the date they were added whichever comes first.

c. A person on the RPL shall be offered employment in a vacant position in the NAF activity from which he or she was separated if:

(1) Management is filling a vacancy by other than detail or position change (promotion, demotion, reassignment).

(2) The position is in the same or lower employment category as the position from which separated.

(3) The position is in the same or lower grade or pay level as the position from which separated.

(4) The position has substantially the same duties as the position from which separated.

d. If the offer is declined, the person will be removed from the RPL and the next eligible person on the RPL will be offered the position, and so on until the RPL is exhausted.

e. Rehiring an individual on the RPL is a noncompetitive recruitment action. Therefore, such individuals shall be rehired before those who receive preference in competitive recruitment actions.

f. A person on the RPL must also be offered priority consideration for NAF jobs in other DoD NAF activities in the commuting area if:

- (1) The NAF activity is filling the vacancy by other than detail or position change (promotion, demotion, reassignment);
- (2) The vacancy is in the same or lower grade or pay level as the position from which the person on the RPL was separated;
- (3) The vacancy is in the same or lower employment category as the position from which the person on the RPL was separated; and
- (4) The vacancy has substantially the same duties as the position from which the person on the RPL was separated.

g. DoD NAF activities shall exchange RPLs within the commuting area to effect the above requirements.

h. An individual's name is removed from the RPL when he or she accepts an offer of a position in the same or higher employment category as the position from which separated in any DoD NAF activity. Declination of such an offer constitutes removal from the RPL.

6. Employee Grievances

- a. NAFI employees shall have the right to present their complaints and grievances to management officials for prompt and equitable consideration. The Heads of DoD Components shall establish procedures for deciding grievances of employees in an equitable and timely manner.
- b. Where a labor organization has exclusive recognition, any negotiated grievance procedure shall be governed by 5 U.S.C. 7101 et seq., as implemented by DoD Directive 1426.1 and DoD 1400.25-M.
- c. The employee grievance procedure may be used to resolve employee disputes of business-based actions and disciplinary actions of suspension of 30 days or less.

7. Disciplinary Actions

a. A disciplinary action is a personnel action affecting a Regular employee that reduced the employee's basic pay or level; placed the employee in a nonpay, nonduty status; or separated the employee from employment; and was effected for cause, i.e., the disciplinary action stemmed directly from the actions of the affected employee.

b. Disciplinary actions do not include:

- (1) Business-based actions.
- (2) Actions taken as the result of termination of temporary promotion.

(3) Separation or change to lower pay or level when voluntarily initiated by the employee.

(4) Application of a revised prevailing rate schedule when there is no change to the position.

(5) Actions taken as a result of an employee abandoning his or her position.

c. Procedures for Processing Disciplinary Actions and Appeals. The Heads of DoD Components shall issue regulations and procedures for processing disciplinary actions and for handling employee appeals of disciplinary actions that result in reduction of pay or in separation. That appeals process shall include a final appellate decision above the level of Installation Commander or General Managers of the Army and Air Force Exchange Service.

8. Performance Management Program. To improve individual and organizational performance and strengthen the link between pay and performance, achievement-focused performance management programs shall be established. Recognition of team achievement is encouraged. Programs may be tailored to fit the mission and culture of the organization, but they must include the following core requirements:

a. An annual appraisal of whether performance met expectations, using at least two rating levels.

b. A fair and consistent method for deriving a summary rating from performance. At a minimum, performance expectations consistent with duties must be discussed with the employee.

c. Approval of the appraisal or rating at level above the rater where practicable, and retention of the appraisal in the employee's Official Personnel Folder for possible future use in reaching personnel decisions.

d. Provision for determining actions to be taken when expectations are met or not met. Payband employees rated less than satisfactory, or equivalent, will not be granted a pay increase (does not apply to crafts and trades employees as their pay is based on the prevailing rate system rules). Appropriate limits and approval levels should be set for cash awards and pay adjustments. An employee may grieve the rating, but not the amount of the pay change.

9. Incentive Awards and Recognition Programs. Recognizing that NAFI employees at all levels share responsibility for the efficient and economical operations of the activity in which they are employed, incentive awards programs shall be established to the extent feasible, and within resources available, for the purpose of improving these operations and recognizing deserving employees.

10. Occupational Safety and Health. Components shall create and maintain a safe and healthful environment for their employees and for the users of facilities managed for the morale, welfare, and contentment of military personnel, their dependents, and authorized civilians. All safety and health regulations shall be strictly adhered to by NAFI employees in accordance with DoD Instruction 6055.1. Where safety technicians are not available within the installation, outside consultants shall be used as appropriate.

11. Drug and Alcohol Abuse. Components shall ensure that drug and alcohol abuse control programs are available to NAFI employees in accordance with the provisions of DoD Directive 1010.4.

B. LABOR-MANAGEMENT RELATIONS POLICY

The Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., is implemented within the Department of Defense by DoD Directive 1426.1 and DoD 1400.25-M. The statute, as implemented by these DoD issuances, applies to Nonappropriated Fund Instrumentalities (see 5 U.S.C. 7103 (a)(2) and (3) and DoD 1400.25-M, Chapter 711).

C. ENTITLEMENT TO PERSONAL SERVICES AND GOVERNMENT QUARTERS

The privileges afforded NAFI employees shall be consistent with those available to appropriated fund employees. In addition, the personal use of the facilities of the NAFI in which an individual is employed may be authorized by local commanders when the use by regular eligible patrons is not diminished. The entitlement of 5 U.S.C. 5911, (Government Quarters and Facilities) as well as any other regulations prescribed by the President and deemed to be necessary and appropriate to carry out the provisions of this section, are hereby administratively extended to NAFI civilian personnel. The Heads of DoD Components shall prescribe the regulations necessary to carry out the provisions of 5 U.S.C. 5911. Except in isolated situations in which the only suitable quarters and facilities available are government-owned, NAFI employees will be expected to secure them from the private sector. Also, exceptions may be made when, in the judgment of the commander, the mission of the installation will be better accomplished by having certain key administrative NAFI personnel quartered on the installation. The occupation of

Government quarters on a temporary basis by NAFI employees while traveling on official business is authorized.

D. "WHISTLEBLOWER" PROTECTION FOR NAFI EMPLOYEES AND APPLICANTS DISCLOSING INFORMATION

1. The DoD Components shall ensure that the confidentiality of employees and applicants making disclosures are protected fully. In accordance with 10 U.S.C. Chapter 81, NAFI employees and applicants for NAFI employment may not be impeded from disclosing information to appropriate authority that they reasonably believe evidences:

- a. A violation of any law, rule, or regulation; or
- b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific damage to public health or safety.

2. DoD Directive 7050.1, "Defense Hotline Program" May 20, 1987, establishes the DoD Hotline for reporting fraud or mismanagement, assigns responsibility and prescribes managing and operating procedures.

3. Concerning protection against reprisals, DoD Directive 1401.3 provides policy and implements P.L. 98-94, DoD Authorization Act, 1984, section 1253 (10 U.S.C. 1587) which establishes protection against reprisals for certain NAFI civilian employees and applicants who have made protected disclosures. DoDD 1401.3 sets forth responsibilities and authorities for providing such protection and prescribes operating procedures.

CHAPTER VIII

CIVILIAN ASSISTANCE AND RE-EMPLOYMENT (CARE) FOR NAF EMPLOYEES AFFECTED BY WORKFORCE REDUCTIONS

A. FUNDING OF NAFI BASE REALIGNMENT AND CLOSURE (BRAC) COSTS

Consistent with the Under Secretary of Defense for Personnel and Readiness memorandum of November 24, 1993, funding of NAFI BRAC costs from appropriated fund BRAC accounts is authorized. Additional policy is stated in the OUSD(C) memorandum of December 21, 1993, "Financial Management Policy and Procedures for Base Closure and Realignment." Components are responsible for identifying base closure program requirements for affected tenant activities, including NAF activities, to obtain authorized funds.

B. PROGRAMS APPLICABLE ONLY IN BRAC SITUATIONS

1. Annual Leave Savings. Employees who earn annual leave and will be involuntarily separated as a result of BRAC shall be offered the opportunity to accumulate annual leave without regard to existing "use or lose" limitations. However, limits on any annual leave used in calculating retirement annuities remain in effect. Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the Principal Director, ODASD (CPP), memorandum of June 1, 1993.

2. Non-Federal Hiring Incentives. A temporary program may be established for the payment of retraining and relocation incentives to encourage non-federal employers to hire and retain individuals whose employment is being terminated because of BRAC. The total combined payment for retraining and relocation for any one individual may not exceed \$10,000. No incentive may be paid for training or relocation commenced after September 30, 1999. Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the DASD (CPP) memorandum of August 25, 1995.

3. Hiring Preference for Certain Contractor Jobs. Consistent with subpart 222.7100 of the Defense Federal Acquisition Regulation Supplement, a request for procurement of a contractor to provide base "caretaker" services needed as a result of BRAC shall include language to ensure that employees affected by BRAC receive the right of first refusal for jobs, for which they are qualified, that would be created by award of the contract. Examples of such contracts include those covering environmental restoration, utility modification, security, and fire prevention.

C. PROGRAMS APPLICABLE IN BRAC AND GENERAL WORKFORCE REDUCTION SITUATIONS

1. Voluntary Separation Incentive Pay (VSIP). Component Heads may authorize VSIP to encourage certain employees to voluntarily resign or retire to reshape and reduce the workforce, and reduce the need for involuntary separation by Business-Based Action. A VSIP is made in a

lump-sum payment equivalent to an employee's severance pay, up to a maximum of \$25,000. For the purposes of calculating VSIP for NAF employees, the severance pay calculation may not exceed the amount calculated using the civil service formula in 5 U.S.C. 5595(c). A VSIP is paid upon the voluntary resignation, early retirement or optional retirement of designated eligible employees. NF-6 employees are "equivalent" to SES and are ineligible for VSIP except where approved by the OASD (FMP). A VSIP may not be paid to any employee separating after September 30, 1999. Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the Principal Director, ODASD (CPP), memorandum of June 1, 1993.

2. Joint Training Partnership Act (JTPA). The National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484), made dislocated DoD employees, including NAF employees, eligible for training, adjustment assistance, and employment services through the Department of Labor in accordance with Title III of the JTPA (29 U.S.C. 1651 et seq). Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the Principal Director, ODASD (CPP), memorandum of June 1, 1993.

3. Extended Employment for Retirement and Health Insurance Eligibility. To enable employees to reach first eligibility for a retirement annuity or retiree health insurance, employees shall be carried in an annual leave status beyond the scheduled separation date to the extent such leave is available in the employee's annual leave account. An employee may not be carried in a leave status to enable the employee to become eligible for optional retirement if he or she is already eligible for early retirement. Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the Principal Director, ODASD (CPP), memorandum of June 1, 1993.

4. Defense Outplacement Referral System (DORS). DORS is an automated referral system designed to provide opportunities for placement consideration to current DoD civilian employees, including NAF employees, and their spouses who may be adversely affected by workforce reduction. Such individuals shall be given an opportunity to register. Registration policy and procedures are stated in the DORS NAF User's Guide and Automation Guide.

5. Reemployment Priority List (RPL). In accordance with Chapter V of this Manual, each personnel office that separates a NAF employee by Business-Based Action shall establish an RPL to provide priority placement assistance to the former employee for one year from the date of separation.

6. Office of Personnel Management (OPM) and DoD Interchange Agreement. Consistent with 5 U.S.C. 2105 (c)(1)(D), on September 20, 1991, OPM and DoD entered into an agreement entitled, "Agreement for the Movement of Personnel Between the Civil Service System and the NAF System in DoD." It permits the movement of NAF employees to positions in the competitive service in the same manner that employees of the competitive service are transferred to such positions. DoD appropriated fund personnel offices should make every effort to include in the minimum area of consideration those NAF employees who are employed within the minimum area of consideration and are eligible for noncompetitive appointment under the Interchange Agreement.

7. Pay and Employee Benefits Protection Under the "Portability of Benefits Act." "The Portability of Benefits for Nonappropriated Fund Employees Act" of 1990, P.L. 101-508, as amended, provides pay and benefits protection for employees who move between NAF and appropriated fund positions under certain conditions.

8. Permanent Change of Station (PCS) Expenses. PCS expenses may be authorized for essential travel and transportation of NAF employees and their dependents in amounts not to exceed those prescribed in Volume 2 of the Joint Travel Regulations (JTR) when NAF employees:

a. Are entitled to and accompany a transfer of function; or

b. Have been issued a Business-Based Action (BBA) notice and are to be reassigned or transferred within DoD before separation; or

c. Have yet to receive a BBA notice, and obtain positions on their own initiative at another DoD NAFI, and the move is considered to be in the interest of the Government; or

d. Are former Regular Full-Time or Part-Time employees separated by BBA, or decline a transfer with function, and are reemployed within one year of separation under a non-temporary appointment at a permanent duty station other than where separation occurred.

9. Homeowners Assistance Program (HAP). The HAP is authorized by P.L. 89-754, section 1013, as amended by P.L. 101-510 to cover NAF employees. Basic policy is contained in DoD Directive 4165.50 and DoD 1400.20-M-4. The Executive Agent for this program is the U.S. Army Corps of Engineers. The law authorizes financial assistance to those eligible military and DoD civilian employee homeowners, including NAF employees, serving at or near military installations who suffer losses incident to the disposal of their homes caused by a drop in real estate values when such military installations are ordered closed, or the scope of operations is reduced. The assistance received may take the form of payment from the government to ameliorate the loss resulting from private sale of the home; sale of the home to the government; or reimbursement of losses due to mortgage foreclosure. The law provides a HAP fund established as the Homeowners Assistance Fund, Defense. Therefore, appropriated funds are authorized for NAF employees eligible for HAP.

10. Severance Pay. Eligible employees separated by Business-Based Action shall receive severance pay in accordance with Chapter III of this Manual.

11. Temporary Continuation of Health Insurance. Eligible NAF employees affected by Business Based Action (BBA) shall be offered the opportunity to elect to retain their health insurance coverage for up to 18 months from the BBA separation. To be eligible, the employee must be separated by BBA, or resign or retire (if not meeting the required years of participation in the plan to continue benefits into retirement) after receipt of a BBA separation notice, and have been enrolled in a NAF health insurance plan for at least six months and still be enrolled at the

time of separation by BBA. Components may require the employee to pay the full cost of the coverage to include any applicable administrative fee. Components may finance the employer's share and administrative fee, for up to 18 months, from BRAC or NAF funds. Although NAF employees are not covered by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 health benefits extension requirements applicable to private sector employees, nor the health benefit extension requirements applicable to federal appropriated fund employees, NAF employers should consider these requirements when determining length of extension and cost to the employee. Until publication of Chapter 1500 of the DoD Civilian Personnel Manual, basic policy is stated in the Principal Director, ODASD (CPP), Memorandum of June 1, 1993.

12. Unemployment Compensation. Eligible employees shall receive unemployment compensation in accordance with federal and applicable state law. Chapter VI of this Manual contains basic policy.